IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 290 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

C I T

Versus

KANCHANJANGA INVESTMENT P. LTD

Appearance:
MR BB NAIK with MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 08/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following questions are referred for our opinion in

respect of Assessment Year 1980-81 :-

1. Whether, the Appellate Tribunal has not erred in law and on facts in holding that interest of Rs.4,67,813/- was not chargeable from Sercon Pvt. Ltd. ?

2. Whether, the Appellate Tribunal has not erred in law and on facts in holding that deduction under section 80M is admissible on net dividend before deduction of the amount admissible under section 80K of the Income tax Act, 1961 ?

2. We have heard Mr BB Naik, learned counsel for the revenue and Mr RK Patel, learned counsel for the assessee.

3. As far as question No. 2 is concerned, the learned counsel for the parties agree that the controversy raised herein is concluded by the decision of this Court in CIT vs. Sarabhai & Sons, (1995) 211 ITR 20 wherein this Court held that in computing deductions allowable under sub-section (1) of section 80M, the net dividend income should be reduced by the deductions allowable to the assessee under section 80K, as provided in sub-section (2) of section 80M.

In view of the above decision, we hold that the Tribunal has erred in holding that deduction under Section 80M is admissible before deduction of the amount admissible under Section 80K of the Act. We accordingly answer question No. 2 in favour of the revenue and against the assessee.

4. As far as question No. 1 is concerned, the learned counsel have invited our attention to the order dated 28.2.2000 in ITR No. 63/85 and to the order dated 20.9.1999 of this Court in ITR No. 195/84. Relying on the aforesaid orders in references betwen the same parties, we send back the case to the Tribunal to pass appropriate orders taking into consideration the observations made in the order dated 20.9.1999 of this Court in ITR No. 195 of 1984.

The reference accordingly stands disposed of with no order as to costs.

(J.M. Panchal, J.)

sundar/-